

BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of

Assessment and Collection
of Regulatory Fees for
Fiscal Year 1997

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) MD Docket No. 96-186
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REPLY COMMENTS

Arch Communications Group, Inc. ("Arch"),¹ by its attorneys, hereby submits these Reply Comments in response to the Notice of Proposed Rulemaking ("NPRM") adopted in the above-captioned docket.² Arch agrees with several commenters that the Federal Communications Commission ("Commission" or "FCC") has not fully explained its new cost-based methodology for calculating and apportioning regulatory fees among the various services for Fiscal Year 1997 ("FY 97"). As explained herein, this precludes the payors of the proposed regulatory fees from providing meaningful comment on the Commission's proposal. Arch also agrees that the proposed substantial increase in FY 97 regulatory fees for the CMRS Mobile Services³ and CMRS One-Way Paging⁴ fee categories are excessive and appear unrelated to the

¹ Arch is a leading provider of paging services with over 3 million pagers currently in service. Arch operates in more than 40 states, and in 80 of the 100 largest markets in the United States.

² *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, Notice of Proposed Rulemaking, FCC 97-49 (rel. Mar. 5, 1997) ("NPRM").

³ This category includes cellular and other public mobile services providing two-way interactive voice communications. The *NPRM* proposes to add broadband PCS to this category for the first time. *NPRM* at ¶ 39.

⁴ This category includes one-way paging services authorized under Parts 20, 22 and 90 of the Commission's rules.

cost of regulating these services. Finally, Arch agrees that the Commission should create a new CMRS Messaging Service fee category, treat the Narrowband Personal Communications Service (“NPCS”) like other one-way messaging services for purposes of regulatory fee requirements and refrain from imposing additional payment obligations upon private carrier paging licensees that have already paid regulatory fees, in advance, for their entire license terms.

I. THE COMMISSION HAS NOT DISCLOSED INFORMATION NECESSARY TO EVALUATE ITS NEW COST ACCOUNTING METHODOLOGY OR JUSTIFY ITS PROPOSED FEE INCREASES

A. The *NPRM* Does Not Disclose Information Necessary to Evaluate the Commission’s New Cost Accounting Methodology

The Commission states in the *NPRM* that it is “proposing for the first time to rely on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs.”⁵ The Commission, however, has provided virtually no information explaining the mechanics and theory of this cost accounting system.⁶ Most importantly, the Commission has not explained its decision-making process in determining the costs associated with the enforcement, policy/rulemaking, international, and user information activities performed on behalf of CMRS Mobile Services and CMRS One-Way Paging providers. Arch agrees with several commenters that this lack of information prevents payors like Arch from determining whether the Commission’s new cost accounting procedures are systematic, accurate, equitable or in any way superior to the methodology used by the Commission in previous years. Thus, Arch agrees with PCIA that payors have no ability to determine whether “‘actual’ costs incurred by

⁵ *NPRM* at ¶ 6.

⁶ Comsat Corporation at 1-2; GE American Communications, Inc. at 3; PCIA at 2; and PanAmSat Corporation at 2.

the Commission for regulatory activities related to CMRS Mobile Services and CMRS One-Way Paging are valid.”⁷

Further, Section 9(a)(1) of the Communications Act authorizes the Commission to collect regulatory fees for four types of regulatory activities: (1) enforcement activities, (2) policy and rulemaking activities, (3) user information services, and (4) international activities.⁸ The Commission has previously determined that “Authorization of Service,” which includes costs associated with application processing and spectrum auctions, should not be characterized as feeable activities for regulatory purposes. Arch agrees with PCIA that it is impossible to determine from the *NPRM* whether costs associated with processing applications (including processing the substantial paging application backlog) or preparing for auctions have been properly excluded from the regulatory costs attributed to the CMRS Mobile Services and CMRS One-Way Paging fee categories.⁹

B. The *NPRM* Does Not Disclose Information Necessary to Evaluate or Justify the Commission’s Proposed Fee Increases

The *NPRM* does not disclose information necessary to evaluate the Commission’s proposed fee increases. For example, as PCIA notes, “the Commission has provided no data on the total number of units for which regulatory fee payments were made in Fiscal Year 1996, nor

⁷ PCIA at 5. While Arch recognizes that the Commission has wide latitude to adopt fee policies and procedures, the Commission must nonetheless explain its decision making with sufficient clarity to demonstrate a reasoned and rational policymaking process and allow the public to provide the Commission with informed comments. The Commission has not done so here. See *Motor Vehicle Mfrs. Ass’n v. State Farm Ins. Co.*, 463 U.S. 29 (1983).

⁸ 47 U.S.C. § 159(a)(1) (1994).

⁹ PCIA at 6.

compared that number to the estimates of growth in CMRS subscribers and the effect of the conversion of a number of private mobile radio service operations to CMRS pursuant to the 1993 Budget Act (other than an acknowledgment that such conversion is a factor in the Commission's estimates)."¹⁰ Arch further agrees with PCIA that the Commission's failure to disclose how much in regulatory fees were paid by CMRS Mobile Services and CMRS One-Way Paging providers during Fiscal Year 1996 ("FY 96"), and their failure to disclose the cost of anticipated regulatory activity during FY 97, is vital if payors (such as Arch), Congress or the public are to fully evaluate whether the methodology announced in the *NPRM* is consistent with the Communications Act.¹¹

Additionally, the *NPRM* does not disclose information necessary to justify the Commission's proposed fee increases. Arch understands that the Commission is under congressional mandate to collect nearly 21% more in regulatory fees in FY 97 than it collected in FY 96.¹² Although the Commission has attempted to limit the impact of such increases by establishing a 25% ceiling as the maximum increase in revenue requirements for any particular service over FY 96 levels,¹³ the regulatory fees proposed by the Commission amount to a 40 - 50%, per unit increase in the amount of fees due for the CMRS Mobile Services and CMRS One-Way paging fee categories. The Commission provides no explanation for this increase. In fact, an increase of this magnitude is entirely inconsistent with the fact that regulatory costs associated with CMRS Mobile Services and One-Way Paging continue to decline due in large

¹⁰ PCIA at 7, citing *NPRM* at Attachment B, n. 115.

¹¹ PCIA at 7.

¹² *NPRM* at ¶ 2.

¹³ *NPRM* at ¶ 10.

part to successful Congressional and Commission efforts in recent years to substantially deregulate two-way wireless and one-way paging/messaging services.

Arch also agrees with PCIA and PageNet that the *NPRM* does not demonstrate a nexus between the fees being charged and the benefits being afforded to payors, contrary to Section 9(a)(1) of the Communications Act. Specifically, when assessing regulatory fees, the Commission must consider, among other things, whether “the benefits provided to the payor of the fee by the Commission’s activities.”¹⁴ This requirement ensures there is an equitable relationship between fees paid and services rendered so that no one service is required to subsidize the regulatory costs (and attendant benefits) of other services.¹⁵ In the *NPRM*, however, the Commission has made no effort to demonstrate what additional benefits CMRS Mobile Services and CMRS One-Way Paging fee payors are likely to receive in exchange for the greatly increased regulatory fees being proposed. Without more information from the Commission, Arch cannot determine whether the Commission’s new cost accounting methodology equitably apportions declining regulatory costs among paging licensees.

II. THE COMMISSION SHOULD REVISE ITS REGULATORY FEE PROPOSAL TO ACCOUNT FOR UNIQUE CIRCUMSTANCES OF CMRS MOBILE SERVICES AND CMRS ONE-WAY PAGING LICENSEES

Currently, there are two CMRS regulatory fee classifications — Mobile Services and One-Way Paging, as defined above. Arch agrees with PageNet that NPCS providers should be treated, for the purpose of regulatory fee classification, like other messaging services. To the extent that NPCS licensees provide message services and not real-time interactive mobile

¹⁴ 47 U.S.C. § 159(b)(1)(A) (1994).

¹⁵ PCIA at 9.

telephone services, they should be subject to same lower fee charged other messaging service licensees.¹⁶ Toward this end, Arch agrees with PCIA that the Commission should establish a CMRS Messaging Service Fee category to replace its CMRS One-Way Paging Fee category.¹⁷ In particular, Arch urges the Commission to endorse a policy of creating regulatory fee categories that recognize the type of service being provided to customers, and not simply the FCC service category in which the particular spectrum was allocated.

Arch also agrees with PageNet that the Commission should not require additional regulatory fees from those private carrier paging licensees that paid up-front regulatory fees prior to September 1996 for their entire license period.¹⁸ Requiring additional regulatory fees from these licensees before the end of their initial license terms would be entirely inequitable and would further diminish the Commission's claim that its new cost accounting methodology more fairly relates actual regulatory costs in proportion to the benefits received by licensees.

For the foregoing reasons, the Commission should: (1) more fully explain its new cost-based accounting methodology; (2) explain, unequivocally, that "Authorization of Service" activities, like auctions, are not included in the Commission's CMRS regulatory cost estimates; (3) refrain from subjecting deregulated services, like CMRS, to excessive increases in cost-based regulatory fees; (4) explain how it considered the benefits received by CMRS licensees in relation to the exorbitant fee increases proposed for FY 97; (5) create a new CMRS Messaging Service fee category to include all CMRS licensees providing messaging, and not real-time

¹⁶ PageNet at 2.

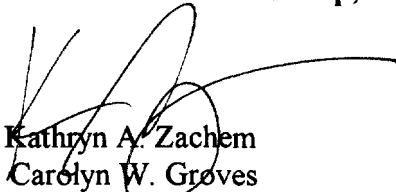
¹⁷ PCIA at 11.

¹⁸ PageNet at 6.

voice, services; and (6) not subject those private carrier paging licensees that paid regulatory fees prior to September 1996 for their entire license term to additional regulatory fees.

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I, Jo-Ann Grayton, do hereby certify that I have, on this 4th day of April, 1997, caused to be served by first class U.S. mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

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